

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

IN RE:)
) CHAPTER 13
DONALD REGINALD HOLMES &)
CAROLYN ROSS HOLMES)
) CASE NO. 11-80164
DEBTORS.)

UNITED STATES OF AMERICA'S OBJECTION TO
CONFIRMATION OF DEBTORS' CHAPTER 13 PLAN

Comes now the United States of America, by and through its attorney, Ripley E. Rand, United States Attorney for the Middle District of North Carolina, on behalf of the Internal Revenue Service (the Service), and objects to confirmation of the Proposed Plan and Order Confirming Plan (the plan) filed herein on March 21, 2011.

IN SUPPORT THEREOF, the United States avers:

1. The debtors in this case filed their Chapter 13 petition on January 28, 2011.

2. On February 10, 2011, the Service filed its Proof of Claim dated February 9, 2011, in the amount of \$82,112.76. On March 9, 2011, the Service filed an amendment to that Proof of claim (Service's amended claim). Such amended claim consists of a secured claim in the amount of \$74,236.88, an unsecured priority claim pursuant to 11 U.S.C. § 507(a)(8) in the amount of

\$1,939.96, and an unsecured general claim in the amount of \$126.36. A copy of the Service's amended claim is attached hereto as Exhibit A.

3. The debtors' income tax liability set forth on the Service's amended claim with respect to taxable year 2010 has been estimated because they have not filed a Federal income tax return for such year.

4. According to 11 U.S.C. § 1308, not later than the day before the date on which the meeting of creditors is first scheduled to be held under 11 U.S.C. § 341(a), the debtors must file all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

5. Since the Chapter 13 petition in this case was filed on January 28, 2011, the debtors were required to file all tax returns for all taxable periods ending between January 28, 2007, and January 28, 2011, before March 3, 2011, the day before the meeting of creditors under 11 U.S.C. § 341(a) was first scheduled to be held on March 4, 2011, in order to comply with 11 U.S.C. § 1308.

6. The debtors have failed to file a Federal income tax return for the taxable year 2010 in violation of 11 U.S.C. § 1308.

7. Since the debtors have not filed all applicable Federal tax returns as required by 11 U.S.C. § 1308, they have not satisfied the requirement for confirmation of their Chapter 13 plan as set forth at 11 U.S.C. § 1325(a)(9).

8. The Chapter 13 plan is also objectionable because it does not adequately provide for the Service's secured claim in the amount of \$74,236.88. The treatment of that claim is governed by 11 U.S.C. § 1325(a)(5). Under that provision, a plan's proposed treatment of secured claims will be confirmed if (1) the secured creditor accepts the plan, see 11 U.S.C. § 1325(a)(5)(A); (2) the debtor invokes the so-called "cram down" power, see 11 U.S.C. § 1325(a)(5)(B); or (3) the debtor "surrenders" to the creditor the property securing the claim, see 11 U.S.C. § 1325(a)(5)(C). In the instant case, it appears that the debtors are trying to satisfy the Service's amended claim by "surrendering" certain real property to the Service. For the reasons discussed below, the debtors' plan fails to "surrender" any property to the Service.

9. In In re White, 487 F.3d 199 (4th Cir. 2007), the Fourth Circuit Court of Appeals addressed what constitutes a "surrender" under 11 U.S.C. § 1325(a)(5)(C). The Court provided in pertinent part:

At the most basic level, then, the word "surrender" means the relinquishment of all rights in property,

including the possessory right, even if such relinquishment does not always require immediate physical delivery of the property to another.

In re White, supra at 205. The Court further provided that the surrender must be completed at or before the confirmation of the debtor's plan. Id. at 207.

10. In the instant case, the debtors' proposed plan provides, *inter alia*, that the debtors will "sell or refinance some or all of their real property within 12 months, paying off all secured and priority claims at that time". Such actions are not a "surrender" of any property to the Service within the meaning of 11 U.S.C. § 1325(a)(5)(C). See In re White, supra.

11. At a minimum, the debtors' plan should provide that the real property securing the Service's secured claim will be offered for immediate sale. In addition, the plan should include provisions that allow for the Service to sell such real property if the debtors are unable to sell such property within a reasonable amount of time. To that end, the Service proposes that its Appraisal Liquidation Specialists be allowed to sell such real property if the debtors are unable to sell it by April 15, 2012.

12. For the foregoing reasons, the debtors' plan does not adequately provide for the Service's secured claim in the amount of \$74,236.88. Moreover, the debtors have not filed their Federal income tax return for taxable year 2010 as required by 11

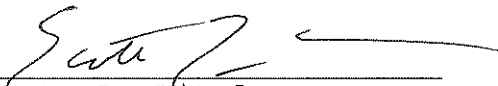
U.S.C. § 1308. Consequently, the debtors' plan should be denied confirmation.

WHEREFORE, it is requested that the debtors' Chapter 13 plan be denied confirmation and that the debtors be ordered to file their Federal income tax return for taxable year 2010 prior to filing a new Chapter 13 plan.

Ripley E. Rand
United States Attorney

4/15/11
Date

By:



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Case# 11-80164 Claim# 2-2 Desc Main Document Filed 03/09/11 Page 1 of 3

Exhibit A

Proof of Claim for Internal Revenue Taxes

Department of the Treasury/Internal Revenue Service



Form 10
Attachment

In the Matter of: DONALD REGINALD & CAROLYN ROSS
HOLMES
2130 EATON FERRY ROAD
LITTLETON, NC 27850

Case Number

11-80164

Type of Bankruptcy Case
CHAPTER 13

Date of Petition
01/28/2011

Amendment No. 1 to Proof of Claim dated 02/09/2011.

The United States has not identified a right of setoff or counterclaim. However, this determination is based on available data and is not intended to waive any right to setoff against this claim debts owed to this debtor by this or any other federal agency. All rights of setoff are preserved and will be asserted to the extent lawful.

Secured Claims (Notices of Federal tax lien filed under internal revenue laws before petition date)

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Penalty to Petition Date	Interest to Petition Date	Notice of Tax Lien Filed: Date	Office Location
XXX-XX-6361	INCOME	12/31/2001	02/12/2007	\$0.00	\$3,960.49	\$428.01	03/09/2009	HALIFAX COUNTY
XXX-XX-6361	INCOME	12/31/2002	02/19/2007	\$6,590.00	\$5,351.97	\$4,013.94	03/09/2009	HALIFAX COUNTY
XXX-XX-6361	INCOME	12/31/2006	11/05/2007	\$37,093.77	\$8,508.51	\$8,290.19	03/09/2009	HALIFAX COUNTY
				\$43,683.77	\$17,820.97	\$12,732.14		

Total Amount of Secured Claims:

\$74,236.88

Unsecured Priority Claims under section 507(a)(8) of the Bankruptcy Code

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
XXX-XX-6361	INCOME	12/31/2008	09/21/2009	\$677.00	\$49.66
XXX-XX-6361	INCOME	12/31/2009	02/28/2011	\$0.00	\$0.00
XXX-XX-6361	INCOME	12/31/2010	/ Unassessed-No Return	\$1,213.30	\$0.00
				\$1,890.30	\$49.66

Total Amount of Unsecured Priority Claims:

\$1,939.96

Unsecured General Claims

Penalty to date of petition on unsecured priority claims (including interest thereon) \$126.36

Total Amount of Unsecured General Claims:

\$126.36

1 UNASSESSED TAX LIABILITY(IES) HAVE BEEN LISTED ON THIS CLAIM BECAUSE OUR RECORDS SHOW NO RETURN(S) FILED. WHEN THE DEBTOR(S) FILES THE RETURN OR PROVIDES OTHER INFORMATION AS REQUIRED BY LAW THE CLAIM WILL BE AMENDED.

INTERNAL REVENUE SERVICE FACSIMILE FEDERAL TAX LIEN DOCUMENT BANKRUPTCY DOCKET: 11-80164	Lien Recorded : 03/09/2009 - 11:21AM Recording Number: 09M67 UCC Number : Liber : Page :
Area: SMALL BUSINESS/SELF EMPLOYED #3 Lien Unit Phone: (800) 829-3903	IRS Serial Number: 521523709

This Lien Has Been Filed in Accordance with
Internal Revenue Regulation 301.6323(f)-1.

Name of Taxpayer:

DONALD R HOLMES & CARO ROSS-HOLMES

Residence:

2130 EATON FERRY RD
LITTLETON, NC 27850-7707

With respect to each assessment below, unless notice of lien
is refiled by the date in column(e), this notice shall constitute
the certificate of release of lien as defined in IRC 6325(a).

Form (a)	Period (b)	ID Number (c)	Assessed (d)	Refile Deadline (e)	Unpaid Balance (f)
1040	12/31/2001	XXX-XX-6361	02/12/2007	03/14/2017	\$4,879.09
1040	12/31/2002	XXX-XX-6361	02/19/2007	03/21/2017	\$12,750.09
1040	12/31/2006	XXX-XX-6361	11/05/2007	12/05/2017	\$40,078.57

Filed at: CLERK OF SUPERIOR COURT HALIFAX COUNTY HALIFAX, NC 27839	Total	\$57,707.75
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This notice was prepared and executed at BALTIMORE, MD
on this, the 03rd day of March, 2009.

Authorizing Official: DEBRA K. HURST (800) 829-7650	Title: ACS W&I 12-00-0000
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing UNITED STATES OF AMERICA'S OBJECTION TO CONFIRMATION OF DEBTORS' CHAPTER 13 PLAN was served this date on the parties listed below by depositing copies thereof, postage prepaid, in the United States mail, or via electronic service of the ECF system:

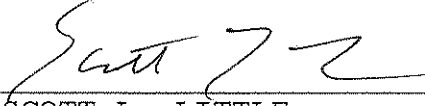
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P.O. Box 3613
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Date: 4/15/11


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